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FEB 25 2005  
U. S. DISTRICT COURT  
EASTERN DISTRICT OF MO.  
ST. LOUIS

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**FILED**

FEB 25 2005  
U. S. DISTRICT COURT  
E. DISTRICT OF MO.

**UNITED STATES OF AMERICA, *ex rel.*  
HAROLD R. MOORE, DPM**

**Plaintiff,**

**v.**

**MID-WEST PODIATRY *et al.***

**Defendants.**

**Cause No. 4:01CV01636ERW**

**UNITED STATES' NOTICE OF PARTIAL INTERVENTION,  
REQUEST TO LIFT SEAL AND MOTION TO DISMISS**

The United States of America (United States), and defendants, Mid-West Podiatry and Associates LLC ("Mid-West Podiatry"), Jeffery Brooks, DPM ("Brooks"), H. John Visser, DPM ("Visser"), and Robert K. Duddy, DPM ("Duddy") (collectively the "Defendants") by and through their respective undersigned attorneys, hereby stipulate as follows:

1. Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(2) and (4)(A), the United States hereby intervenes in those portions of the relator's complaint pertaining to the United States civil claims against Defendants for:

- (a) The submission of claims to Medicare Part B for CPT code 11720 (debridement of 1-5 nails) in conjunction with a modifier billing code under which the computer automatically generated a statement of "clinical evidence of mycosis, marked limitations of ambulation and other such modifiers," or a similar statement, which caused the claim to then be approved by Medicare as a covered service when it should not have been so approved; and

- (b) The submission of claims to Medicare Part B for CPT code 11721 (debridement of 6 or more nails) in conjunction with a modifier billing code under which the computer automatically generated a statement of “clinical evidence of mycosis, marked limitations of ambulation and other such modifiers,” or a similar statement, which caused the claim to then be approved by Medicare as a covered service when it should not have been so approved.

2. On or about February 4, 2005, relator was informed in writing of the United States’ intent to intervene, provided with a copy of the written agreement between Defendant’s and the United States, and informed of his statutory right to request a fairness hearing. Relator has not requested a fairness hearing, thus Defendant’s and the United States assert that the amount and terms of the settlement reached by them are fair, adequate and reasonable pursuant to 31 U.S.C. § 3730(c)(2)(B).

3. Accordingly, Defendant’s and the United States request that, pursuant to Fed. R. Civ. P. 41(a)(2) and 31 U.S.C. 3730(b)(1), the claims set forth in the complaint be dismissed as follows:

- (a) the intervened portions of the complaint, as described above, shall be dismissed with prejudice as to the United States and as to the relator;

- (b) the non intervened portions of the complaint shall be dismissed without prejudice as to the United States and with prejudice as to the relator.

- (c) each party will bear its own costs.

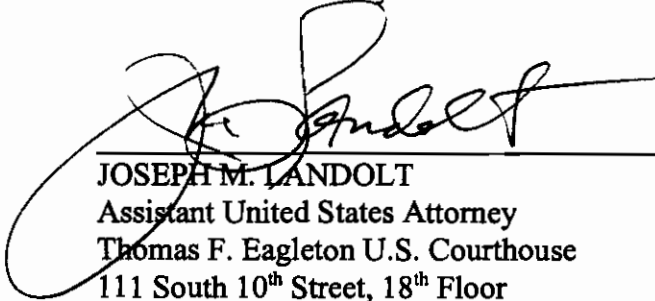
4. Consistent with this Court’s prior orders, the United States requests that, with exception of the Complaint, the Court’s Order of May 22, 2003 partially unsealing the complaint, this Notice of Partial Intervention, Request to Lift Seal and Motion to Dismiss, **all other**

**pleadings**, including, but not limited to, all requests for extensions and any memoranda and declarations in support thereof, **remain under seal** due to their privileged nature.

A proposed order accompanies this Notice.

Respectfully submitted,

JAMES G. MARTIN  
United States Attorney

A large, stylized handwritten signature in black ink, appearing to read "J. Landolt", is written over a horizontal line.

JOSEPH M. LANDOLT  
Assistant United States Attorney  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on February 25, 2005 the foregoing was sent via Federal Express to:

Mr. Lon C. Engel, Esquire  
Engel & Engel, P.A.,  
11 E. Lexington Street, Suite 200  
Baltimore, MD 21202

A handwritten signature in black ink, appearing to read "J. Landolt", is written over a horizontal line.

JOSEPH M. LANDOLT  
Assistant United States Attorney